

CHAPTER 4-35 PESTICIDE ACT

4-35-01. Title. This chapter must be known as the "North Dakota Pesticide Act of 1975".

4-35-02. Creation of pesticide control board. There is hereby created the pesticide control board, hereinafter also called the "board", consisting of the agriculture commissioner, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The agriculture commissioner must be chairman of the board and is responsible for the enforcement of this chapter. The board shall meet at the call of the chair. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided for the administration of this chapter to the agriculture commissioner. The board may act through the office of the agriculture commissioner, and one person on the commissioner's staff may be specifically responsible to, or act as the state-level agent of, the board.

4-35-03. Enforcing agency. This chapter must be administered by the pesticide control board, hereinafter referred to as the "board".

4-35-04. Declaration of purpose. The legislative assembly hereby finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this chapter is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of their use and application.

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide that is classified for restricted use.
6. "Commercial applicator" means an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26.
7. "Dealer" means any person who sells a pesticide to an end user.

8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
12. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
17. "Labeling" means the label and all other written, printed, or graphic matter:
 - a. Accompanying the pesticide or device; and
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
19. "Mixture" means a diluted pesticide combination.

20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
22. "Pest" means:
 - a. Any insect, snail, slug, rodent, nematode, fungus, or weed; or
 - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
23. "Pesticide" means:
 - a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
24. "Pesticide dealer" means any person who distributes restricted use pesticides.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
28. "Public applicator" means a certified applicator who applies pesticides as an employee of a state or federal agency, municipal corporation, public utility, or other governmental agency.
29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the agriculture commissioner under section 19-18-05.
30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
31. "Snail" or "slug" includes every harmful mollusk.
32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.

33. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
34. "Weed" means any plant which grows where not wanted.
35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

4-35-06. Pesticide control board to administer chapter and adopt regulations.

1. a. The pesticide control board shall administer this chapter and may adopt rules in accordance with chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
 - (1) Plants, including forage plants, on adjacent or nearby lands.
 - (2) Wildlife in the adjoining or nearby areas.
 - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.
2. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
3. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
4. In order to comply with section 4 of the federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
5. Rules to implement this chapter may provide for:
 - a. The collection, examination, and reporting of samples of pesticides.
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
 - c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

4-35-06.1. Limitation on authority of political subdivisions regarding pesticides.

No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

4-35-06.2. Crop protection product harmonization and registration board - Recovery of funds. The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer this section.

4-35-06.3. Minor use pesticide fund - Continuing appropriation. The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

4-35-07. Experimental use permits. Repealed by S.L. 2003, ch. 188, § 3.

4-35-08. Classification of certificates. The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

4-35-09. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial responsibility must be maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner shall immediately suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - c. A person required to be certified in the right-of-way category.
 - d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

4-35-10. Expiration of certification - Renewal. A certificate issued under section 4-35-09 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

4-35-11. Nonresident application - Designation of agent for service of process. Any nonresident applying for certification as an applicator or dealer under this chapter to operate in this state shall file a written power of attorney designating the North Dakota state university extension service or its designee as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of this state over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not

required to designate the extension service as such agent. The extension service is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the extension service or of a resident agent. The copy will be duly certified by the extension service.

4-35-12. Pesticide dealer certification.

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained certification from the North Dakota state university extension service, or the service's designee in the county in which the applicant operates the applicant's principal place of business. A certified person is required at each location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, registrant, or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.
2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. The board shall adopt rules governing service of process on members of corporations, limited liability companies, partnerships, or associations, and governing the listing of membership in such organizations. The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.
3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements within each classification for which certification is sought as prescribed by the board.
4. Each restricted use pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to denial, suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.

4-35-12.1. Stop-sale orders. Whenever any pesticide or device is found by the commissioner and there is reason to believe on the basis of inspection or tests that the pesticide or device is in violation of any of the provisions of this chapter, or when the registration of the pesticide has been canceled by the state or United States environmental protection agency or has been suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

4-35-13. Application of act to governmental entities. All governmental agencies and public utilities are subject to this chapter and rules adopted to implement this chapter.

4-35-14. Private applicators.

1. No person who would be a private applicator, if certified, may buy, use, or supervise the use of any pesticide classified for restricted use unless such person first complies with the certification requirements as determined by the board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.
2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency.
3. The board shall determine by rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The North Dakota state university extension service, or its designee, in the county of the residence of the applicant shall issue a certificate to any private applicator who has qualified as prescribed by the board. However, the North Dakota state university extension service, or its designee, may require any applicant required to be certified under this chapter to pay a reasonable charge, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification. The commissioner, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification issued under this chapter, if the commissioner finds that the applicant or the holder of the certification has committed any act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.

10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase the restricted use pesticide unless the person or agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. Applied any economic poison that is not registered pursuant to chapter 19-18.

4-35-16. Commercial and public applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates to maintain records of sales of restricted use and special exemption pesticides and all applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the certified applicator or public applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

4-35-18. Reciprocal agreement. The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

4-35-19. Exemptions.

1. The certification requirements of this chapter do not apply to a competent person applying general use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied.

Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.

2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

4-35-20. Discarding and storing of pesticides, pesticide containers, and pesticide rinsate. No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

4-35-21. Reports of pesticide accidents or loss.

1. The board shall, by regulation, require the reporting to the agriculture commissioner of pesticide accidents.
2. Any person claiming damages from a pesticide application inflicting damage on property, except where the claimant was the operator or applicator of the pesticide, shall report the loss in accordance with this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with this chapter, the claimant shall permit the commissioner, the applicator, and the applicator's representatives to observe, during reasonable hours, the lands or property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands automatically bars the claim against the applicator. The number of applicator's representatives who may make an observation under this subsection may be limited by the board.
3. An applicator shall inform any person employing the applicator to apply to land any pesticide of the reporting requirements of this chapter.

4-35-21.1. Reports of loss through pesticide application required.

1. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property unless, within sixty days from the date the claimant knew or reasonably should have known of the damage:
 - a. The claimant has served the applicator allegedly responsible for damage with a verified report of loss;
 - b. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and

- c. The claimant has mailed or delivered to the agriculture commissioner a verified report of loss together with proof of service of the report required by subdivision a and the report required by subdivision b, if applicable.
2. Notwithstanding the provisions of subsection 1, if damage is alleged to have occurred to growing crops, the report must be filed prior to the time fifty percent of the field is harvested or within sixty days from the date the claimant knew or reasonably should have known, whichever occurs first.
3. The applicator must provide anyone who alleges damage with information of this section for filing a verified report and that timely filing of a report is a prerequisite to any civil action. Failure to provide such information, in addition to the penalties of this chapter, may be grounds for revocation of the applicator's certification and, in addition, the sixty-day limitation of this section does not apply.
4. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

4-35-21.2. Contents of verified reports of damage. Any verified report of the loss arising out of the application of any pesticide by any applicator required by this chapter, must include, so far as known to the claimant: the name and address of the claimant, the type, kind, and location of property allegedly injured or damaged, the date the alleged injury or damage occurred, the name of applicator allegedly responsible for the loss or damage, and if the claimant is not the same person for whom the work was done, the name of the owner or occupant of the property for whom the applicator was rendering labor or services.

4-35-22. Subpoenas. The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a certification issued under the provisions of this chapter.

4-35-23. Penalties.

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this chapter shall be guilty of a class A misdemeanor.
2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this chapter shall be guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

4-35-24. Enforcement.

1. The commissioner is charged with the duty of enforcing the requirements of this chapter and any rules or regulations issued hereunder.
2. The commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or any rule or regulation made pursuant to this

chapter, in the district court of the county in which such violation occurs or is about to occur.

3. In the event any person violates any provision of this chapter, the commissioner may issue an order requiring such person to cease and desist from the unlawful activity. In the event the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.
4. For the purpose of carrying out the provisions of this chapter, the commissioner may enter upon any public or private premises at reasonable times, in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which such equipment is stored or used.
 - b. Inspect or sample lands actually or reported to be exposed to pesticides.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or land.
 - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the applicator for values less than three dollars. If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.
 - f. Observe the use and application of a pesticide.
 - g. Have access for the purpose of inspecting any premises or other place where pesticides or devices are held for distribution, sale, or for use or for the purpose of inspecting and obtaining samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for such pesticides.
5. The commissioner shall, at any reasonable time, have access to the records pertaining to pesticide application and sales of any person. The commissioner may copy or make copies of such records for the purpose of carrying out the provisions of this chapter. Unless required for the enforcement of this chapter, such information is confidential.
6. When access is refused or in situations where the commissioner feels critical enforcement documentation may be lost, the commissioner or the commissioner's designated agent for the purposes set forth in this chapter, may apply to any court of competent jurisdiction for a search warrant authorizing access to such land or records for said purposes. The court may, upon such application and upon compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.
7. If a civil penalty pursuant to section 4-35-23 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the commissioner may suspend or revoke a certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

4-35-25. Information. The board may, in cooperation with private, local, state, or federal agencies, publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

4-35-26. Delegation of duties. All authority vested in the commissioner by virtue of the provisions of this chapter may, with like force and effect, be executed by such employees or agents as the commissioner may, from time to time, designate for that purpose.

4-35-27. Cooperation. The board may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

1. Secure uniformity of regulations.
2. Enter into cooperative agreements with and submit plans to the environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the federal Insecticide, Fungicide, and Rodenticide Act.
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter into contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.
6. Regulate certified applicators.
7. Comply with other purposes prescribed by regulation of the commissioner.

4-35-28. Disposition of funds. All moneys received by the board under the provisions of this chapter must be deposited to the credit of the certification and training fund under the control of the board.

4-35-29. Prior liability. The enactment of this chapter does not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on July 1, 1975.

4-35-30. Crop protection product harmonization and registration board - Duties - Grants.

1. The crop protection product harmonization and registration board consists of:
 - a. The governor or the governor's designee;
 - b. The agriculture commissioner or the commissioner's designee;
 - c. The chairman of the house agriculture committee or the chairman's designee;
 - d. The chairman of the senate agriculture committee or the chairman's designee;
 - e. A member of the house or senate agriculture committee who is not a member of the faction in which the committee chairman is a member, appointed by the legislative council chairman;
 - f. A crop protection product dealer in the state appointed by the governor from a list of three nominees submitted by the North Dakota agricultural association;
 - g. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota grain growers association;

- h. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota oilseed council;
 - i. A representative of the crop protection product manufacturing industry appointed by the chairman of the legislative council; and
 - j. The director of the North Dakota state university agricultural experiment station.
- 2. The representative of the crop protection product manufacturing industry and the director of the agricultural experiment station shall serve as nonvoting members. The governor or the governor's designee shall serve as chairman of the board.
- 3. The board shall:
 - a. Identify and prioritize crop protection product labeling needs;
 - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
 - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
 - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
 - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
 - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
 - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
- 4. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
- 5. The board may administer a grant program through which agriculture commodity groups may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
- 6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
- 7. The board may adopt rules to implement this section.